

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of the Application of) File No. BALH-20000403ABI

Air Virginia, Inc.)

(Assignor))

and)

Clear Channel Radio Licenses, Inc.)

(Assignee))

For Consent to the Assignment of the License of)

WUMX(FM), Charlottesville, VA)

RECEIVED

MAR 27 2002

MM Docket No. 02-38 FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief Administrative Law Judge Richard L. Sippel

EMERGENCY MOTION FOR ORDER
TO TERMINATE TIME BROKERAGE AGREEMENT

Eure Communications, Inc. ("Eure"), party in the above-captioned proceeding, by its attorneys hereby moves the presiding judge for an order directing Air Virginia, Inc. ("Air Virginia") and Clear Channel Radio Licenses, Inc. ("Clear Channel") to immediately terminate the Time Brokerage Agreement ("TBA")¹ between Air Virginia and Clear Channel Broadcasting, Inc., a Clear Channel affiliate, until this proceeding has been finally adjudicated. In support of this motion, the following is shown:

1. **Background.** By *Hearing Designation Order* ("HDO"), FCC 02-53, released March 19, 2002, the Commission designated for hearing the above-captioned application for consent to assignment of license of WUMX(FM), Charlottesville, Virginia, from Air Virginia to Clear Channel on the issue of whether the public interest, convenience and necessity would be served by the grant of the application. Because of the high concentration of revenue that would result from Clear Channel's acquisition of WUMX,

¹ A copy of the TBA is attached for ease of reference by the presiding judge.

the Commission was unable to find on the record before it that a grant of the application would be in the public interest, and set the application for hearing.

2. The Air Virginia-Clear Channel TBA Should Immediately Be Terminated to Mitigate Further Harm to Competition. In designating this case, the Commission found that it could not make a positive public interest finding where grant of the application would result in Clear Channel controlling approximately 48% of the revenues in the Charlottesville market and two companies controlling over 90% of the revenues. With its TBA, Clear Channel already controls those revenues, and has done so since April 1, 2000, when the TBA went into effect. Unless the presiding judge acts to terminate the TBA, the situation will continue. The TBA itself does not comply with the Commission's policies on concentration of revenue. It is clear that a hearing to determine whether ownership of WUMX is in the public interest where the harm is ongoing would be an empty thing. The Commission has left it to the presiding judge to review this situation and craft a remedy. In other words, the Commission identified the problem and has set in motion a procedure to address the problem and remedy it. The remedy is termination of the TBA.

3. The Deferral Option. The Commission has given Air Virginia and Clear Channel (at *HDO* para. 53) the option to defer consideration of the application until after completion of the rule making proceeding in *Rules and Policies Concerning Multiple Ownership of Radio Stations in Local Markets*, 16 FCC Rcd 19861(2001)[66 Fed. Reg. 63997, published December 11, 2001](“*Local Radio Ownership NPRM*”). However, the refusal of the parties to proceed to hearing would result in maintaining the *status quo* in the Charlottesville radio market with Clear Channel continuing to own approximately 48.3%

of the revenues in the market. The WUMX TBA accounts for approximately 18.3% of that revenue share. To remedy this situation, the presiding judge should order Air Virginia and Clear Channel to terminate their TBA at once pending resolution of this case. Terminating the TBA would reduce Clear Channel's share of the market to approximately 30% and would restore competition in the market. At paragraph 26 *HDO* the Commission noted, "In evaluating the potential adverse competitive effects of a proposed transaction, under the interim policy [*Local Radio Ownership NPRM*], we also consider the effect on competition, if any, that may have resulted from a pre-existing LMA, TBA, or JSA between the applicants." There is clear harm in permitting the TBA to remain in effect. Clear Channel has decreased programming choices available to the public. Clear Channel's WFFX(FM) dropped its Oldies format, the only format of its type in the market to program directly against Eure's WWWV(FM) by playing Classic Rock. In addition, Clear Channel's WKAV(AM) formerly broadcast an adult-standard format, but now programs a talk format against Eure's WINA(AM). Clear Channel's format changes resulted in less diversity in programming, not more. The Commission summarized Clear Channel's situation with "We believe that there are material issues as to whether Clear Channel's asserted benefits would result from the transaction and would benefit the public. We find the record in this proceeding insufficient to conclude that the benefits of this transaction outweigh the potential for competitive harm." In light of this, the TBA should be promptly terminated.

4. **The Time Brokerage Agreement.** The Air Virginia-Clear Channel TBA has a seven-year term extending through March 31, 2007. If the Commission cannot make a finding that ownership of WUMX by Clear Channel is in the public interest on

concentration of revenue grounds, how can the TBA remain in effect when its existence results in a 48.3% share of the revenue? The short answer is: it cannot. The presiding judge should order its termination at once. Further, the presiding judge should order Clear Channel and Air Virginia to refrain from entering into any joint sales or facilities sharing agreements or arrangements that would affect revenue share until this proceeding is completed. Section 5.1 of the TBA provides that the TBA may be renegotiated or terminated if the FCC determines that the agreement is inconsistent with Air Virginia's licensee obligations or is otherwise contrary to FCC policies, rules, or statutes. The TBA provides a procedure for renegotiating the agreement to cure the defects perceived by the FCC, or, if the parties determine that:

recasting this Agreement to meet the defects perceived by the FCC is impossible, the parties may terminate this Agreement without further liability upon 180 days' prior written notice, provided that FCC consent for a wind-down period of such length is, if required, obtained.

Termination of the TBA was clearly within the contemplation of the parties when they reached the agreement in the year 2000. In light of the above provision of the TBA, the presiding judge should determine that the TBA is contrary to FCC policies, rules and statutes, that it is not possible to recast the TBA to meet his concerns, and that the parties should terminate the TBA immediately.

5. The Commission Could Not Find the Ownership of WUMX by Clear Channel Is in the Public Interest. The Commission was unable to make a finding that this arrangement is in the public interest since it could not grant the captioned application absent a hearing. In *Local Radio Ownership NPRM* at para. 81, the Commission took up the issue of TBA's, and related Local Marketing ("LMA") and Joint Sales Agreements

(“JSA”) and made it clear that the scope of the NPRM includes the evaluation of LMAs or TBA’s. The Commission considered requiring prior Commission approval of these arrangements. The Commission noted that it could:

“rely on our **enforcement authority** to require termination of LMAs or TBAs that are contrary to the public interest because of their effect on competition. We also could provide expressly for voluntary filings by parties that seek certainty as to whether their LMA or TBA is consistent with our policies. [bold supplied]”

Since the assignment application has now been set for hearing, it follows logically that the Air Virginia-Clear Channel TBA should be terminated until this proceeding is completed. If the Commission ultimately decides that ownership of WUMX is in the public interest, the TBA can be reinstated. If not, the harm to competition has been mitigated by its early termination. To let the TBA remain in force is to ignore the economic realities of the situation. If the Commission cannot make a positive finding that ownership of WUMX is in the public interest because Clear Channel would have 48% of the revenues in the market, the Commission cannot let remain in place a TBA that perpetuates that situation. The *Local Radio Ownership NPRM* (at paras. 79-83) plainly encompasses TBA’s within its scope. This TBA should be immediately terminated subject to being reinstated if Air Virginia and Clear Channel can demonstrate to this court that their relationship is in the public interest. Leaving the TBA in place means Clear Channel will continue to control nearly 50% of the advertising revenues in the Charlottesville market. Terminating the TBA will result in Clear Channel holding approximately 30% of the revenues and will bring competition in the market back to the *status quo ante* the Air Virginia-Clear Channel arrangement.

In summary, Eure respectfully requests the presiding judge to issue an order to Air Virginia and Clear Channel directing them to terminate the TBA.

Respectfully submitted,

EURE COMMUNICATIONS, INC.

By: 

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Its Attorneys

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March 27, 2002

CERTIFICATE OF SERVICE

I, Kelly Waltersdorf, a legal assistant in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on March 27, 2002, copies of the foregoing Emergency Motion for Order to Terminate Time Brokerage Agreement were sent via First Class Mail, postage pre-paid to the following:

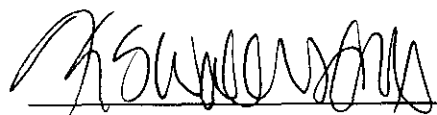
Honorable Richard L. Sippel*
Chief Administrative Law Judge
Federal Communications Commission
Washington, DC 20054

Charles W. Kelley, Esq.*
Chief, Investigations and Hearings Division
Enforcement Bureau
Federal Communications Commission
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Suite 300
Washington, DC 20036-1717
(Counsel for Clear Channel)

*by hand


Kelly Waltersdorf

TIME BROKERAGE AGREEMENT

This TIME BROKERAGE AGREEMENT (the "Agreement") is made as of March __, 2000 between CLEAR CHANNEL BROADCASTING, INC. ("Programmer"), a Nevada corporation, and AIR VIRGINIA, INC. ("Licensee"), a Virginia corporation which is licensee of Station WUMX-FM, Charlottesville, Virginia (the "Station").

WITNESSETH:

WHEREAS Licensee and Programmer are entering into an Asset Purchase Agreement ("Purchase Agreement") simultaneously herewith providing for the purchase of the Station by Programmer subject to the consent of the Federal Communications Commission ("FCC");,

WHEREAS, Programmer and its affiliates are in the business of producing and transmitting news, sports, informational, public service and entertainment programming and associated advertising in the Charlottesville radio market;

WHEREAS, Programmer desires to provide programming to be transmitted on the Station pursuant to the provisions hereof and pursuant to applicable regulations of the Federal Communications Commission (the "FCC");

WHEREAS, Programmer and Licensee simultaneously herewith have entered into an Asset Purchase Agreement for the sale of the Station from Licensee to Programmer; and

WHEREAS, Licensee desires to accept and transmit programming supplied by Programmer on the Station while Licensee maintains control over the Station's finances, personnel matters and programming, as well as continuing to maintain the right to broadcast Licensee's own public interest programming on the Station;

NOW, THEREFORE, in consideration of these premises and the mutual promises, undertakings, covenants and agreements of the parties contained in this Agreement, the parties hereto do hereby agree as follows:

ARTICLE I PROGRAMMING AGREEMENT

1.1 **Programmer Programming.** Programmer shall provide and Licensee shall transmit on the Station (including the subcarriers and any additional authorizations or spectrum allocated to the Station in the future) news, sports, informational and entertainment programming and associated advertising, promotional and public service programming and announcement matter sufficient to program a substantial amount of the Station's broadcast day on a daily basis throughout the year (hereinafter "Programmer Programming"), subject to paragraph 1.3 herein. Programmer shall comply with all FCC regulations and policies and other applicable laws in the provision of Programmer Programming and, in consultation with Licensee, said programming shall serve the ascertained needs and interests of the Station's community of license; provided, however, that such efforts by Programmer shall not displace the responsibility of Licensee to ensure that the overall programming of the Station responds to issues of concern to the community of license.

1.2 Licensee Programming. Licensee shall have the right to utilize up to four hours per week of the Station's air time between the hours of 7 and 9 a.m. on Sundays, and at such other times as Licensee may designate, for the presentation of programming, either produced or purchased by Licensee (hereinafter "Licensee Programming"), as it determines appropriate to respond to the needs and interests of Charlottesville and the surrounding area. Additionally, Licensee reserves the right at any time to pre-empt the Programmer Programming for the broadcast of emergency information and programming of the Licensee's selection which Licensee believes to be in the public interest and to delete or preempt in its sole discretion any Programmer Programming for the purpose of transmitting such programming. Licensee shall comply with all FCC regulations and policies and other applicable laws in the provision of Licensee Programming.

ARTICLE II

OPERATIONS

2.1 Licensee Responsibilities:

(a) Licensee shall be responsible for, and shall pay in a timely manner, all costs of operating, owning, and controlling the Station, including, but not limited to, utilities, rent, and maintenance costs for the Station's transmitter and antenna system and the Station's main studio, subject to Programmer's obligation to reimburse Licensee for such costs pursuant to Section 3.2 and Programmer's further obligation to reimburse Licensee for all music licensing fees attributable to programming presented over the Station by Programmer to the extent not paid for directly by Programmer.

(b) Licensee shall be ultimately responsible for the Station's compliance with all applicable provisions of the Communications Act of 1934, as amended, the rules, regulations, and policies of the FCC and all other applicable laws pertaining to the ownership and operation of the Station.

(c) Licensee shall be responsible for engaging its own general manager, who shall be responsible for overseeing the operation and programming of the Station, and for employing, or contracting with, its own chief operator, who shall be responsible for the Station's compliance with all engineering requirements.

(d) Licensee shall be responsible for the payment of the salaries, taxes, insurance, and related costs of all personnel employed by Licensee.

(e) Licensee shall be responsible for maintaining all authorizations required for the operation of the Station in full force and effect during the term of this Agreement, unimpaired by any acts or omissions of Licensee.

(f) Licensee shall be responsible for repair and maintenance of the Station's equipment and facilities, all of which shall be kept in a good state of repair and good working condition so as to permit their operation in compliance with the rules and regulations of the FCC and the standards of good engineering practice; provided that Licensee shall be entitled to reimbursement for all costs and expenses that Licensee reasonably incurs in fulfilling this responsibility as provided for in Section 3.2 hereof.

(g) Licensee shall maintain full replacement value insurance with respect to the Station's technical equipment and, in the event of any loss or damage to such property, Programmer shall use the proceeds of any applicable insurance policies to replace, restore, or repair the lost or damaged property as promptly as practicable.

2.2 Programmer Feed. Programmer shall provide, at its sole expense, a broadcast-quality feed to the Station's transmitter. Programmer technical personnel shall be responsible for connection of this feed to the Station's broadcast systems and for switching the signal to air at the appropriate time, under the direction and supervision of the Licensee general manager or his or her delegatee

2.3 Station Staffing. Licensee shall have sole discretion to make and effectuate all staffing and personnel decisions for the Station, including the sole responsibility to determine appropriate levels of staffing to fulfill Licensee's duties under paragraph 2.1 herein; provided, however, that Licensee shall employ sufficient personnel to satisfy FCC main studio staffing requirements. Programmer shall have no control or right of review whatsoever over any decision by Licensee to hire or dismiss any Licensee employee. It is anticipated that Licensee may terminate some of its employees, in furtherance of this Agreement. Programmer may hire some of the employees terminated by Licensee; therefore, Licensee warrants to Programmer that there are no controversies pending or threatened between Licensee and any of its employees or any labor unions or other collective bargaining agents representing or purporting to represent any employees of Licensee. If Programmer employs any employees terminated by Licensee, Programmer shall assume the Licensee's obligations to said employees for vacation and sick leave subject to such obligations being pro-rated between Licensee and Programmer as of the Commencement Date.

2.4 Political Advertising. Programmer shall cooperate and consult with Licensee concerning its policies and practices regarding political advertising and otherwise take such steps as may be necessary or appropriate in order to insure Licensee's compliance with its obligations under the Act and the rules, regulations and policies of the FCC, with respect to the carriage of political advertisements and programs (including, without limitation, the rights of candidates and, as appropriate others, to "equal opportunities") and the charges permitted therefor. To this end, Programmer will provide Licensee with information as to the lowest unit rate for all classes and categories of time in the Programming that Programmer offers for sale to commercial advertisers, and, at the request of Licensee, shall provide copies of advertising contracts and other documents used by Programmer to determine the lowest unit rate applicable to any class or category of time. Additionally, Programmer will promptly notify Licensee of any changes in its lowest rates which occur during the forty-five day period before any primary election and the sixty days period before any general election. Licensee shall have the right to sell to political candidates as much time in the Programming for political advertisements as Licensee reasonably believes is necessary in order for Licensee to satisfy its obligations to afford federal candidates reasonable access to the facilities of the Station, to discharge its public interest obligation with respect to non federal candidates, and to comply with its obligations to afford such candidates equal opportunities, and Programmer shall insert such political advertisements in the Programming; provided that to the extent practicable and consistent with Licensee's obligations as the licensee of the Station, Licensee will consult with

Programmer regarding the number and scheduling of political advertisements to be inserted in the Programming, and provided further that Programmer will be entitled to the net revenue received by Licensee from the sale of political advertisements inserted in the Programming. Programmer shall refer all requests for political advertising to Licensee and Programmer shall not sell any time in the Programming for political advertising.

2.5 Station Identification Announcements/EAS Tests. During all hours when Programmer is delivering the Programming for broadcast over the Station, Programmer shall (i) include in the Programming, at the appropriate times, the hourly station identification announcement required to be broadcast over the Station. Additionally, during all hours when Programmer is delivering the Programming for broadcast over the Station, Programmer shall maintain at the location from which the Programming is being originated a receiver capable of receiving test messages and alerts over the Emergency Broadcast System, which EAS receiver shall be continuously monitored. If an EAS test or alert is received during the hours when Programmer is delivering the Programming for broadcast over the Station, Programmer shall cause the appropriate EAS test or alert message to be transmitted over the Station, shall, in the event of an actual activation of the Emergency Broadcast System, cause all steps that the Station is required to take in such an event to be taken, and shall be responsible for assuring that the receipt and broadcast of all EAS tests and alerts are properly recorded in the station log.

2.6 New Technology.

(a) Any future FCC frequency allocations associated with the operation of the Station are included under the provisions of this Agreement.

(b) In the event that the FCC authorizes the provision of new technologies over the Station's frequency, Programmer will have the right, at no cost to Licensee and under the supervision and control of Licensee's chief operator, to modify the main transmission system for implementation of such technologies and/or build and own a transmission facility for such technologies. Should new transmission facilities be built and owned by Programmer under this paragraph, the parties agree to enter into an appropriate agreement for the lease of that facility to Licensee, and further agree that Programmer shall provide programming and/or other content to that transmission facility under the terms of this Agreement.

(c) If this Agreement ends during any time when Licensee or its successor in interest is the licensee of the Station, Licensee or its successor in interest shall have the right to purchase for an amount equal to fair market value, as determined under subparagraph (f) below, any facilities constructed at the Station by Programmer during the term of this Agreement to accommodate new technologies.

(d) The fair market value of the facilities referenced in subparagraph (c) above will be agreed upon by the parties or, if the parties are unable to agree, determined promptly by appraisers who have experience in the valuation of the facilities at issue. One appraiser will be selected and paid for by Programmer and one appraiser will be selected and paid for by Licensee. If the appraisals prepared by the two appraisers are 10% or less apart, the appraisals will be averaged to obtain fair market value. If the appraisals are more than 10% apart, the two appraisers will

appoint a third appraiser, the services of which will be paid for equally by Programmer and Licensee. After the third appraisal is completed, the fair market value will be determined by averaging the two closest in dollar value of the three appraisals.

ARTICLE III FEES AND OTHER CONSIDERATION

3.1 Fee. Programmer shall pay to Licensee as a fee on a monthly basis (the "Monthly Fee") an amount as stated in Schedule A hereto. Amounts due to Licensee under this subparagraph shall be due and payable on the first day of the month, prorated for any partial month. Programmer shall pay Licensee a late fee equal to five percent (5%) of the monthly fee if any Monthly Fee payment is not received by Licensee within five (5) business days of the date on which it is due.

3.2 Reimbursement of Expenses. As additional consideration for the use of the Station's facilities, during the term of this agreement Programmer shall reimburse Licensee for Licensee's reasonable and necessary costs and expenses of operating the Station listed in Exhibit A hereto and for Licensee's reasonable and necessary costs of repairing and/or replacing worn out or defective equipment and components, including, without limitation, transmitter tubes, within twenty (20) days of receipt of a written request for such reimbursement accompanied by bills or other evidence reasonably satisfactory to Programmer as to the actual operating costs and expenses or costs of effectuating equipment repairs or replacements for which reimbursement is sought, provided that Licensee shall not submit requests for reimbursement of its costs and expenses more frequently than once per month. The foregoing notwithstanding, Programmer shall not reimburse Licensee for any salaries, payroll taxes, or benefits, for costs of repairing or replacing equipment and components which are covered by insurance and/or manufacturer's or supplier's warranties, or for the costs of any capital improvements in the Station unless such capital improvements are approved, in advance and in writing, by Programmer.

3.3. Assumption of Contracts. On the Commencement Date, as hereinafter defined, Programmer shall assume all of Licensee's obligations under the contracts for the sale of air time on the Station in effect on that date, including trade agreements, and Licensee's obligations under the contracts listed in Schedule B hereto, provided that to the extent that the value of air time on the Station to be provided by Programmer under trade agreements assumed by Programmer pursuant to this section exceeds the value of goods or services to be received by the Station under such assumed trade agreements by more than \$5,000, such excess amount shall be applied as a credit against amounts to be paid to Licensee by Programmer hereunder.

3.4. Adjustments. In the event Licensee preempts or rejects Programmer Programming, the Monthly Fee due Licensee pursuant to Section 3.1 shall be prorated based on the percentage that the total hours in any calendar month of Programmer Programming pre-empted or rejected by Licensee bears to the total amount of Programmer Programming that Programmer would have broadcast over the Station during the month if no programming had been pre-empted or rejected.; provided that no credit shall be given based upon the rejection of Programmer Programming by

Licensee on the grounds that Licensee reasonably believed such programming to be contrary to the public interest or the Commission's policies.

3.5. Licensee Revenue. Licensee revenues obtained for the sale of advertising or program time and contained within or related to public affairs programs specifically designed to serve the needs of Charlottesville shall be retained by Licensee. Any revenues obtained or earned by Licensee for advertisements in programs or for airing of programs primarily designed as entertainment or commercial programs shall be paid over to Programmer.

ARTICLE IV TERM

4.1 Initial Term. Subject to the provisions for early termination contained herein, the term of this Agreement shall be for seven (7) years commencing on April 1, 2000 (the "Commencement Date") and shall continue unless terminated earlier pursuant to this Section until the occurrence of the earliest of the following events: (a) the consummation of the sale of the assets and assignment of the license for the Station pursuant to the Purchase Agreement; (b) the first day of the month following termination of the Purchase Agreement; or (c) the first day of the month following the date on which an order of the FCC denying its consent to the assignment of the Station's license to Programmer becomes a Final Order.

4.2. Early Termination. This Agreement may be terminated by either Licensee or Programmer by written notice to the other if the party seeking to terminate is not then in material default or breach hereof, upon the occurrence of any of the following:

(a) the other party is in material breach of its obligations hereunder and has failed to cure such breach within fifteen (15) business days after receipt of written notice thereof from the non-breaching party; provided, however, that if the breach is one that cannot be cured with reasonable diligence within fifteen (15) business days, but could be cured within an additional thirty (30) days and the breaching party is diligently attempting to cure the breach, then the nonbreaching party may not terminate this Agreement on account of such breach until such additional thirty (30) day period has elapsed without a cure;

(b) the other party is in material breach of its obligations under the Purchase Agreement and the time specified in that agreement for curing the breach has expired; or

(c) the mutual consent of both parties;

4.6 Bankruptcy. If either party shall file or have filed against it any petition for bankruptcy or reorganization or any other action under the United States Bankruptcy Act, as now or hereafter amended, or any other state or federal insolvency law, and with regard to such petition against it, that petition is not dismissed within sixty (60) days, the other party shall have the right, exercisable at any time within sixty (60) days after the filing of any such petition or action, to terminate this Agreement as of any date within (60) days of the date such party notifies the other party of its election to terminate this Agreement. If such termination shall occur pursuant to this

paragraph, such termination shall extinguish and cancel this Agreement without further liability of either party to the other, provided, however, that there shall be a final accounting and payment of monies due but unpaid under this Agreement.

ARTICLE V REGULATORY MATTERS

5.1 Renegotiation Upon FCC Action. If at any time during the term of this Agreement the FCC issues a statement of general applicability or the FCC determines that this Agreement is inconsistent with Licensee's licensee obligations or is otherwise contrary to FCC policies, rules, or statutes, the parties shall renegotiate this Agreement in good faith and recast this Agreement in terms that are likely to cure the defects perceived by the FCC and return a balance of benefits to both parties comparable to the balance of benefits provided this Agreement in its current terms. If, after such good faith negotiations, both parties determine that recasting this Agreement to meet the defects perceived by the FCC is impossible, the parties may terminate this Agreement without further liability upon 180 days' prior written notice, provided that FCC consent for a wind-down period of such length is, if required, obtained. If termination shall occur pursuant to this paragraph, such termination shall extinguish and cancel this Agreement without further liability on the part of either party to the other; provided, however, that there shall be a final accounting and payment of monies due but unpaid under this Agreement.

5.2 FCC Approvals.

(a) Each party independently has determined in good faith that this Agreement can be entered into and implemented without filing any application, petition, request for declaratory ruling, or other filing with the FCC seeking its consent or approval. The parties also have determined that this Agreement must be filed with the FCC under Section 73.3613 (d) of the FCC's Rules, and that this Agreement must be maintained in the public file of the Station and of each station licensed to Programmer in the market under Section 73.3526(a)(12) of the FCC's rules.

(b) Should a change in FCC policy or rules make it necessary to obtain FCC consent for the implementation, continuation or further effectuation of any element of this Agreement, both parties hereto shall use their best efforts diligently to prepare, file and prosecute before the FCC all petitions, waivers, construction applications, amendments, rule-making comments and other related documents necessary to secure and/or retain FCC approval of all aspects of this Agreement. Programmer and Licensee shall bear in equal measure the reasonable cost of preparation of any such documents, provided that each party has approved such expenditures. FCC filings under this paragraph must be reviewed and approved by both parties prior to submission of such filings.

ARTICLE VI
REPRESENTATIONS AND WARRANTIES, COVENANTS

6.1 Licensee's Representations and Warranties. Licensee represents and warrants to Programmer as follows:

(a) Compliance with Law. Licensee is in material compliance with all laws, rules and regulations governing the business, ownership and operations of the Station that are material in any way to this Agreement. Except as otherwise stated herein, no consent, approval or authorization by or filing with any governmental authorities on the part of Licensee is required in connection with the transactions contemplated herein. All attendant contracts and undertakings, as well as the carrying out of this Agreement, will not result in any violation of or be in conflict with Licensee's Articles of Incorporation or its By-laws, or any existing judgment, decree, order, statute, law, rule, or regulation of any governmental authority applicable to Licensee.

(b) Authority. All requisite corporate resolutions and other authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by Licensee have been duly adopted and complied with.

(c) Authorizations in Good Standing. Licensee currently is the holder of the authorizations related to the Station listed on Schedule C attached hereto, and Licensee holds each listed authorization in good standing. At the Commencement Date, Licensee's license and all related authorizations for the Station shall be in full force and effect and unimpaired by any acts or omissions of Licensee, its employees or agents; and there shall be no complaint, condition, event, defect, or occurrence existing or, to the knowledge of Licensee, threatened against said authorization(s) that would materially threaten their retention or renewability.

(d) Maintaining Business and Condition of Assets. Subject to this Agreement, Licensee shall continue to operate the business of the Station in the regular course. Licensee will comply in all material respects with all laws affecting its operation, file all required tax returns, pay all required taxes and, subject to Programmer's obligation to reimburse Licensee for certain operating expenses, otherwise maintain the Station Assets.

6.2 Programmer's Representations and Warranties. Programmer represents and warrants to Licensee as follows:

(a) Organization. Programmer is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada and has full power and authority to own its property and to carry out all of the transactions contemplated by this Agreement.

(b) Compliance with Law. Except as otherwise stated herein, no consent, approval or authorization by or filing with any governmental authorities on the part of Programmer is required in connection with the transactions contemplated herein. All attendant contracts and

undertakings, as well as the carrying out of this Agreement, will not result in any violation of or be in conflict with Programmer's articles of incorporation or any existing judgment, decree, order, statute, law, rule or regulation of any governmental authority applicable to Programmer.

(c) Corporate Authority. All requisite corporate resolutions and other authorizations necessary for the execution, delivery, performance and satisfaction of this Agreement by Programmer have been duly adopted and complied with.

6.3 Licensee's Affirmative Covenant. Licensee covenants that it will comply in all material respects with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations) and pertinent provisions of all contracts, permits and pertinent agreements to which it is a party or is otherwise bound that relate to this Agreement.

6.4 Programmer's Affirmative Covenant. Programmer covenants and agrees that it will comply in all material respects with all applicable federal, state and local laws, rules and regulations (including, without limitation, all FCC rules, policies and regulations) and pertinent provisions of all contracts, permits and pertinent agreements to which it is a party or is otherwise bound that relate to this Agreement. Programmer shall use its best efforts to comply with the program regulations and restrictions required by Licensee, which are attached hereto as Schedule B. The regulations and restrictions attached hereto as Schedule B may be modified by mutual agreement at any time during the pendency of this Agreement.

6.5 Compliance with Copyright Act and Program Licensing Agreements. Programmer represents and warrants that all Programmer Programming provided to Licensee for broadcast on the Station will comply with the Copyright Act or the rights of any person under the Copyright Act. Programmer shall assume and pay all copyright liability that may occur as a result of the broadcast of Programmer Programming on the Station other than blanket music performance license fees. Programmer further represents and warrants that it has or will enter binding agreements with all program sources which authorize the broadcast of the Programmer Programming on the Station. Programmer shall assume and pay all liability to program suppliers for broadcast of the Programmer Programming on the Station.

ARTICLE VII COLLECTION OF LICENSEE'S ACCOUNTS RECEIVABLE

On the Commencement Date, Licensee shall assign to Programmer all of the Licensee's accounts receivable for purposes of collection only. Programmer shall use such efforts as are reasonable and in the ordinary course of business to collect the accounts receivable for a period of ninety (90) days following the Closing Date (the "Collection Period"). This obligation, however, shall not extend to the institution of litigation, employment of counsel, or any other extraordinary means of collection. So long as the accounts receivable are in Buyer's possession, neither Licensee nor its agents shall make any solicitation of them for collection purposes or institute litigation for

the collection of any amounts due thereunder. All payments received by Programmer during the Collection Period from any person or entity obligated with respect to any of the accounts receivable shall be applied first to Seller's account and only after full satisfaction thereof to Buyer's account; provided, however, that if during the Collection Period any account debtor contests in writing the validity of its obligation with respect to any account receivable, then Programmer shall return that account receivable to Licensee after which Licensee shall be solely responsible for the collection thereof. Within thirty (30) days after the end of each calendar month during the Collection Period (or if such day is a weekend or holiday, on the next business day), Programmer shall furnish Licensee with a list of the accounts receivable collected during the prior calendar month and shall pay to Licensee the full amount collected with respect to the accounts receivable during such month. Any of the accounts receivable that are not collected during the Collection Period shall be reassigned to Licensee after which Programmer shall have no further obligation to Licensee with respect to the accounts receivable; provided, however, that all funds subsequently received by Programmer (without time limitation) that can be specifically identified, whether by accompanying invoice or otherwise, as a payment on any account receivable belonging to Licensee shall be promptly paid to Licensee. Programmer shall not have the right to compromise, settle, or adjust the amounts of any of the accounts receivable without Seller's prior written consent, or to withhold any proceeds of the accounts receivable or to retain any uncollected accounts receivable after the expiration of the Collection Period for any reason whatsoever. Licensee shall be responsible for the payment of all salesperson's, agency, and representative commissions due with respect to the accounts receivable.

ARTICLE VIII

MISCELLANEOUS

8.1 Force Majeure. Notwithstanding anything contained in this Agreement to the contrary, neither party shall be liable to the other for failure to perform any obligation under this Agreement (nor shall any charges or payments be made in respect thereof) if prevented from doing so by reason of fires, strikes, labor unrest, embargoes, civil commotion, rationing or other orders or requirements, acts of civil or military authorities, acts of God or other contingencies, including equipment failures, denial of the license renewal application of the Station due to a challenge by a third party unrelated to either of the parties, and beyond the reasonable control of the parties, and all requirements as to notice and other performance required hereunder within a specified period shall be automatically extended to accommodate the period of pendency of such contingency which shall interfere with such performance.

8.2 Notice. All notices, requests, demands and other communications that are required or may be given pursuant to the terms of this Agreement shall be in writing and shall be deemed given when delivered by hand, overnight courier, or sent by facsimile transmission or on the third day after mailing if mailed by express mail or its equivalent, postage prepaid, return-receipt requested if available, as follows:

- (a) If to Licensee, to:

Air Virginia, Inc.
255 Albermarle Square
Charlottesville, VA 22901
Attn: David Mitchell
Facsimile: 804-964-1080

with a copy (which shall not constitute notice) to:

David Tillotson
4606 Charleston Terrace, N.W.
Washington, DC 20007-1911
Fax: 202-965-2018

(b) If to Programmer, to:

Clear Channel Radio, Inc.
Clear Channel Radio Licenses, Inc.
200 Concord Plaza
San Antonio, TX 78216
ATTN: Mark P. Mays
Facsimile: 210-822-2299

with a copy (which shall not constitute notice) to:

Schwartz, Woods & Miller
Suite 300, The Dupont Circle Building
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
Facsimile: 202-833-2351
Attention: Lawrence M. Miller/Malcolm G. Stevenson

or to such other address as any party shall have designated by notice or in writing to the other parties. Copies to counsel unaccompanied by notices to principals shall not constitute notice.

8.3 Duty to Consult. Each party shall will use its best efforts not to take any action that will unreasonably interfere with, threaten or frustrate the other party's purposes or business activities, and that it will keep the other party informed of, and coordinate with the other party regarding, any of its activities that may have a material effect on such party.

8.4 Confidentiality. Except as may be required by law or any governmental agency, no announcement to the press or to any third party (specifically including, without limitation, the personnel of the Station) of the transactions contemplated herein shall be made prior to the commencement of this Agreement by either party without the consent of the other party.

8.5 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remainder of this Agreement shall not be affected thereby, and the parties shall to use their best efforts to negotiate a replacement article that is neither invalid, illegal nor unenforceable, which will preserve the relative economic positions of the parties.

8.6. Assignability.

(a) This Agreement shall inure to the benefit of and be binding upon Licensee, Programmer and their respective successors and assigns. Subject to subparagraph (b) hereof, Licensee shall not assign or transfer its rights, benefits, duties or obligations under this Agreement without the prior written consent of Programmer.

(b) Licensee shall assign this Agreement in connection with an assignment of license or transfer of control of the Station for which FCC consent must be sought. Programmer shall have the right to assign this Agreement to any affiliate of Programmer or unaffiliated entity or party without the consent of Licensee.

8.7 Amendment of Agreement. This Agreement supersedes all prior agreements and understandings of the parties, oral and written, with respect to its subject matter. This Agreement may be modified only by an agreement in writing executed by all of the parties hereto.

8.8 Survival. All representations, warranties, covenants and agreements made herein by the parties hereto or in any certificate to be delivered hereunder or made in writing in connection with the transactions contemplated herein shall survive the execution and delivery of this Agreement.

8.9 Payment of Expenses. Except as otherwise provided herein and in Schedule A hereto, Licensee and Programmer shall pay their own expenses incident to the preparation and carrying out of this Agreement, including all fees and expenses of their respective counsel.

8.10 Further Assurances. From time to time after the date of execution hereof, the parties shall take such further action and execute such further documents, assurances and certificates as either party reasonably may request of the other to effectuate the purposes of this Agreement.

8.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument, and shall become effective when each of the parties hereto shall have delivered to it this Agreement duly executed by the other party hereto.

8.12 Headings. The headings in this Agreement are for the sole purpose of convenience of reference and shall not in any way limit or affect the meaning or interpretation of any of the terms or provisions of this Agreement.

8.13 Dealings with Third Parties. Neither party is nor shall hold itself out to be vested with any power or right to bind contractually or act on behalf of the other as its contracting agent or otherwise for committing, selling, conveying or transferring any of the other party's assets or property, contracting for or in the name of the other party, making any contractually binding representations contractually binding such party.

8.14 Indemnification.

(a) In the event of claims, demands, causes of action, loss, investigations, proceedings, damages, penalties, fines, expenses and judgments, including reasonable attorneys' fees and costs, arising directly or indirectly out of the negligence or willful misconduct of the other party, its agents or employees in connection with the performance of this Agreement (including, without limitation, claims for antitrust violations and defamation arising from acts outside of Programmer Programming), or arising out of or resulting from any inaccuracy, misrepresentation, or breach of any representation, warranty, or covenant contained herein, each party shall forever, to the fullest extent permitted by law, protect, save, defend and keep the other party harmless and indemnify said other party. The indemnified party shall not settle any such claims without the consent of the indemnifying party, which consent shall not be unreasonably withheld.

(b) Programmer shall indemnify Licensee and hold Licensee, its officers, directors, stockholders and employees harmless against any FCC-issued fines or forfeitures arising from or relating to any Programmer Programming broadcast on the Station. Licensee shall contest any such fines or forfeitures, at Programmer's expense, in proceedings at the FCC or in any court to the extent desired by Programmer provided that Licensee in its good faith judgment determines that there are contestable issues. Programmer shall indemnify Licensee against any petitions to deny, petitions for revocation, petitions for orders to show cause, or other challenges brought by parties unrelated to and unaffiliated with Licensee to the extent that such challenges rely upon Programmer Programming. Programmer shall vigorously support Licensee, including the filing of FCC pleadings in support of Licensee, in the event that any petitions to deny, petitions for revocation, petitions for orders to show cause, or other challenges are brought by parties unrelated to and unaffiliated with Licensee to the extent that such challenges concern the existence or operation of this Agreement.

(c) Programmer shall forever, to the fullest extent permitted by law, protect, save, defend and keep Licensee and its officers, directors, employees and agents and each of them harmless and indemnify them from and against all loss, damage, liability or expense, including reasonable attorney's fees, resulting from any claim of libel, slander, defamation, copyright infringement, idea misappropriation, invasion of right of privacy or publicity or any other claim against Licensee arising out of Programmer's programming on the Station, provided that Licensee give Programmer prompt notice of any claim and shall cooperate in good faith with Programmer in attempts to resolve and settle any such claims. Licensee shall not settle any such claims without the consent of Programmer, which consent shall not be unreasonably withheld. The foregoing shall not apply to any Licensee-provided programming.

8.15. Arbitration. Any dispute with respect to the existence of a default or as to damages to which a non-defaulting party may be entitled as a result of the breach of this Agreement under these provisions shall be determined in accordance with binding arbitration procedures set out in Section 10.12 of the Purchase Agreement. Any arbitration undertaken in accordance with provisions of this paragraph shall be conducted in Charlottesville, Virginia, and the parties agree to submit themselves to the jurisdiction of the courts of the State of Virginia or the Federal District Court with jurisdiction over the Charlottesville, Virginia, area to enforce any award arising out of such arbitration proceedings.

8.16 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Virginia, without giving effect to the principles of conflict of laws.

8.17 Loyalty. In addition to the obligations and prohibitions otherwise provided hereunder, neither party, nor its officers, directors, partners, joint venturers, subsidiaries, parent corporations, affiliates, successors or assigns, each in the personal and corporate capacities, will directly or indirectly initiate, prosecute, or in any way knowingly aid in the initiation or prosecution of any challenge to the other party's FCC license(s), at any time during the term of this Agreement or any extension thereof, and for a period ending six months after the date for the filing of the first license renewal application by either party after this Agreement is terminated or otherwise ends.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

AIR VIRGINIA, INC.

By: _____

Title: _____

CLEAR CHANNEL BROADCASTING, INC.

By: _____

Title: _____